



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Stephen M. Haase

**SUBJECT: TOBACCO ADMINISTRATIVE  
FINES**

**DATE:** May 26, 2004

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Approved

/s/

Date

5/28/04

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## **RECOMMENDATION**

To direct the Administration to review and analyze State tobacco laws and other provisions of Chapter 9.44 to determine whether adding and/or modifying provisions of the Administrative Citation Schedule of Fines to include and/or increase other administrative fine amounts related to tobacco enforcement is appropriate. The review and analysis will be done in coordination with Code Enforcement, the San Jose Police Department, and the City Attorney's Office. City staff will submit the recommendations to the City Council for their consideration after completion of the review and analysis of the applicable law at a regularly scheduled City Council meeting after the summer hiatus.

## **BACKGROUND**

Under the California Labor Code, no employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed place of employment. This means that State law prohibits smoking in virtually all indoor areas in the State of California. The smoking prohibition was created in order to provide a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment. The prohibition supersedes the local enactment or enforcement of local ordinances regulating the smoking of tobacco in enclosed places of employment except under limited circumstances. Any violation of the prohibition is an infraction, punishable by a fine not to exceed \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third and each subsequent violation within one year. These fine amounts are mandated by State law and are not subject to change by local agencies. San Jose enforces the State prohibition by issuing criminal citations.

Although the State has elected to preempt most areas of tobacco enforcement, the Labor Code does allow cities to enforce local tobacco-related ordinances that are stricter than the State law. San Jose's Smoking Ordinance (S.J.M.C. sec. 9.44.010 et seq.), includes several provisions that are more strict than State law. For example, the City's ordinance prohibits smoking in medical research treatment sites, patient smoking areas, employee breakrooms, and in motor vehicles used in employment, which are more strict than the State's standards. The Smoking Ordinance also prohibits any person who owns or controls a building or structure, who is not otherwise an employer, to permit or allow smoking. (S.J.M.C. sec. 9.44.010 B.) These stricter provisions may be enforced under the Municipal Code by a misdemeanor prosecution or by issuance of an administrative citation. In order to provide consistency, the administrative fine amounts for these violations were set the same as State law: \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third and each subsequent violation within one year.

The City may modify these amounts however, since they pertain to violations of the Municipal Code that are enforceable under the Municipal Code rather than State law.

### **ANALYSIS**

Code Enforcement has experienced an increase in the number of persons who own or control a building or structure, who are not otherwise employers, who permit or allow smoking in their facilities in violation of S.J.M.C. section 9.44.010 B. These persons are receiving second, third and subsequent citations for violating this provision of the Municipal Code. Although the persons who are subject to enforcement under this provision are limited, since most persons found to be allowing the smoking to occur will be employers and subject to criminal enforcement under State law, the increase in violations necessitates an increase in the fine amount. Raising the fine amounts for smoking violations to \$250 for the first offense, \$500 for the second offense, and \$1,000 for the third and subsequent offenses within a three -year period, as provided for under SJMC sec. 1.15.040, would likely deter the prohibited conduct and act as an incentive for responsible parties to comply with the City's smoking regulations. Raising the fines to these amounts would place smoking violations under the Municipal Code at the same fine level as the blight violations in the Community Preservation Ordinance.

In fiscal year 2003-2004, Code Enforcement is expected to issue 18 citations for violations of 9.44.010.B. This represents approximately \$5,400 in fines.

### **CONCLUSION**

The estimated amount of fines assessed for smoking citations issued pursuant to SJMC sec. 9.44.010.B. by increasing the fine amounts, would be approximately \$10,000 annually, which is approximately double the amount currently assessed. While this represents a relatively small amount of money to the General Fund, the increase in fines could help modify the behavior of repeat violators and ensure a higher percentage of compliance. Staff anticipates bringing this recommendation forward for the City Council's consideration at a regularly scheduled City Council meeting after the summer hiatus. While preparing this recommendation for the City Council's consideration, Code Enforcement, the San Jose Police Department, and the City Attorney's Office will be reviewing and analyzing State tobacco laws and other provisions of Chapter 9.44 to determine whether adding and/or modifying provisions of the Administrative Citations Schedule of Fines to include and/or increase other administrative fine amounts related to tobacco enforcement is also appropriate. Staff will provide the City Council with the results of their review and analysis at the time their recommendation to amend the Administrative Citation Schedule of Fines to increase the fine amount for S.J.M.C. section 9.44.010 B.

### **COORDINATION**

This memo was coordinated with the City Attorney's Office and the San Jose Police Department.

/s/  
STEPHEN M. HAASE, DIRECTOR  
Planning, Building and Code Enforcement